

April 16th is National Health Care Decisions Day!

*April 2019 Press Release -submitted by Alyssa Kulpa, Elder Benefit Specialist**

Celebrating National Health Care Decisions day is a great time to review your own advance planning documents or create advance planning documents if you have not already done so! Everyone over the age of 18 should be planning in the event incapacity would occur. Be sure to discuss your wishes with your agent or use this as an opportunity to have another conversation with them to ensure your wishes are clear!

The law on advance care planning documents and authority varies by state. In Wisconsin, practitioners typically recommend the following documents:

- Power of Attorney for Finances and Property;
- Power of Attorney for Health Care;
- Declaration to Physicians (a/k/a Living Will); and
- Authorization for Final Disposition (burial & funeral arrangements).

Advance planning documents can be executed with or without an attorney. Even though the basic forms are available online for free, an attorney can provide legal advice and counseling regarding the person's specific circumstances to ensure that the person's wishes are stated and carried out as desired. It is important that the power of attorney for health care is signed before two unrelated and disinterested witnesses. Although the power of attorney for finances does not technically require witnesses, it is granted important protections under Wisconsin law if it is notarized when signed.

Powers of attorney provide authority for someone to make financial and health care decisions for another person. Unlike other states, Wisconsin is not a "next of kin" state, meaning that family members do *not* have the ability to make health care decisions on behalf of another person just by virtue of being a relative (or spouse). Wisconsin law requires that a person be granted specific authority to act-either authority from the individual person (via a power of attorney document), or from a court (usually through a guardianship action). Power of attorney documents are valid once they are drafted and signed. When they are activated depends on the language within the document. Typically, a power of attorney for health care is activated by two physicians or a physician and a psychologist when the principal has an incapacity to make health care decisions. A power of attorney for finances is typically active upon signing, however, can be activated upon incapacity instead if those instructions are provided within the document.

A Living Will is a document that on its face may look similar to a power of attorney for health care; however, there are several important differences. In writing a Living Will, a person is making

a directive to his or her doctor regarding the person's end of life decisions. There is no authority given to another person to act as an agent on the principal's behalf, as is the case in the power of attorney documents. Additionally, a Living Will only applies in limited situations, such as if you have a terminal condition or are in a persistent vegetative state. By contrast, a power of attorney for health care provides for an agent to have broad authority to make decisions in a wide range of situations. A person can have both a power of attorney for health care and a Living Will, if desired, or one or the other. If the documents are inconsistent, the power of attorney for health care takes precedence.

Finally, the Authorization for Final Disposition allows a person to indicate his or her funeral and burial preferences in writing and to appoint a representative to carry out those wishes upon the person's death. This document is recommended as part of a comprehensive estate plan because the authority under a power of attorney ends upon the principal's death. If no agent is appointed under an Authorization for Final Disposition form, Wisconsin law indicates that a surviving spouse, children, parent, or siblings (in that respective order) can make funeral and burial decisions on behalf of a decedent. If there are surviving children or siblings that are making the decision, a majority of that group must agree and that can potentially cause issues and delays.

Advance Directive forms can be found on the [Department of Health Services website](#). More information on advance directives and how to complete these forms are also available on our [website](#).

Myth-busting false beliefs about POA's:

1. I do not need a POA because my spouse or family can make decisions on my behalf.

- a. Wisconsin is not a "next of kin" state, meaning that family members do not have inherent authority to make decisions solely based on their relationship with you. Authority must be specifically given to a person through a POA document or a court order.

2. I do not need a POA until I am older or sick.

- a. Too often, people wait until it is too late to do advance planning. If a person no longer has the capacity to execute a POA document, then a guardianship action in court may be needed. All adults over the age of 18 should consider creating advance directives.

3. Once I create a POA, I'm set for life.

- a. POA documents are not locked in stone. They can be revoked at any time or re-executed if the principal is of sound mind. [Honoring Choices](#) recommends that advance planning documents be reviewed if any of the 4 "d's" occur:
 - i. **Death** (if any of the agents named in your POA pass away);

- ii. **Decade** (if it has been more than 10 years since you drafted or reviewed your documents);
- iii. **Divorce** (if you subsequently get a divorce after drafting your POA—in Wisconsin, this invalidates your documents by law);
- iv. **Disease** (if you become sick or are diagnosed with an illness).

In reviewing your documents, you want to ensure that the agent(s) you chose would still be able and/or willing to serve, that the principal and witnesses signed on the same date, that the witnesses are not related to the principal, that the document still reflects your current wishes and that nothing is crossed out.

4. I don't have a lot of money or property, so I don't need a Power of Attorney for Finance.

- a. A Power of Attorney for Finance may be needed to apply for or manage insurance and public benefits like Medicaid.
- b. A Power of Attorney for Finance agent would be the one who could sign contracts regarding property, represent your interests in litigation or sign a lease.
- c. A Power of Attorney for Finance can establish a special needs or burial trust.
- d. You determine exactly what authority you want your agent to have or not have.

Join us in celebrating National Health Care Decisions Day!

If you have questions on this topic or other benefit related issues, for Jefferson County residents age 60 or over may contact the Elder Benefit Specialist at the Aging and Disability Resource Center 920-674-8734.

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Honoring Choices - FREE Advance Care Planning assistance please call:

Fort Healthcare – (920) 568-5279

Watertown Regional Medical Center – (920) 262-4298